Office - Supreme Court, U.S.
FILED
FEB 27 1984
ALEXANDER L. STEVAS
CLERK

(2)

No. 83-967

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

THE PEOPLE OF THE TERRITORY OF GUAM,
Petitioner,

VS.

CONCEPCION OKADA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

HOWARD TRAPP
200 Pan American Building
139 Murray Boulevard
Agana, Guam 96910
Telephone [671] 477-7000
Attorney for respondent

4 pp

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

BEST AVAILABLE COPY

No. 83-967

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

THE PEOPLE OF THE TERRITORY OF GUAM,
Petitioner,

vs.

CONCEPCION OKADA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

Respondent, Concepcion Okada, respectfully requests that the Court deny the petition for a writ of certiorari, seeking review of the Ninth Circuit's opinion in this cause. That opinion is reported at 694 F.2d 565 and 715 F.2d 1347.

REASONS WHY THE WRIT SHOULD BE DENIED

1. *Guam v. Okada,* 694 F.2d 565 (1982), *reh'g denied,* 715 F.2d 1347 (1983), and *Virgin Islands v. Christensen,* 673 F.2d 713 (1982), were rendered by the Ninth and Third Circuits, respectively, each sitting as the highest appellate court of a territory (*Guam v. Olsen,* 431 U.S. 195, 199 n.6 (1977)), and any conflict is merely corollary to a permis-

sible difference of opinion in territorial courts. (*Cf. Ruhlin v. New York Life Ins. Co.*, 304 U.S. 202 (1938) ("The conflict may be merely corollary to a permissible difference of opinion in the state courts").)

2. The Third Circuit answers the question whether the Virgin Islands is authorized to appeal from a district court to a court of appeals with a "Yes" (*Virgin Islands v. Christensen*, 673 F.2d 713 (3d Cir. 1982)), and the Ninth Circuit answers the question whether Guam is authorized to appeal from a district court to a court of appeals with a "No" (*Guam v. Okada*, 694 F.2d 565 (9th Cir. 1982), *reh'g denied*, 715 F.2d 1347 (9th Cir. 1983)), but *both* answers may very well be welcomed by, and hence the questions are best left to, the very source of the authority of a territory to appeal from a district court to a court of appeals, the Congress under its "broad power over territories under Art. IV." (*Chase Manhattan Bank (Nat'l Ass'n) v. South Acres Dev. Co.*, 434 U.S. 236, 237 n.2 (1978).)

3. Any conflict is more apparent than real: the Ninth and Third Circuits *agree* that a territory is authorized to appeal from a trial court to an appellate court, and *only* the Ninth Circuit has rendered a decision on the question of whether a *second* appeal is authorized. (*Compare Guam v. Okada*, 694 F.2d 565 (9th Cir. 1982), *reh'g denied*, 715 F.2d 1347 (9th Cir. 1983), *with Virgin Islands v. Christensen*, 673 F.2d 713 (3d Cir. 1982).)

CONCLUSION

For these reasons the petition for a writ of certiorari should be denied.

Dated, Agana, Guam,
February 17, 1984.

Respectfully submitted,

HOWARD TRAPP
200 Pan American Building
139 Murray Boulevard
Agana, Guam 96910
Telephone [671] 477-7000
Attorney for respondent